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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF ARIZONA**
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7 **LAURIE MILLER, BRIAN DIMAS,**
8 **KIM MILLS, ANTHONY SOZA,**
9 **BRUCE CAMPBELL, KELLIE**
10 **BOWERS, TIM HUNTER, BRIAN**
11 **SAYLOR, MICHAEL SCHAMADAN,**
12 **INDIVIDUALLY AND AS**
13 **REPRESENTATIVE OF THE ESTATE**
14 **OF HIS WIFE, BRANDI SCHAMADAN,**

15 **Plaintiffs,**

16 **vs.**

17 **YORK RISK SERVICES GROUP and**
18 **FRANK GATES SERVICE COMPANY,**

19 **Defendants.**

20 **2:13-cv-1419 JWS**

21 **ORDER AND OPINION**

22 **[Re: Motion at Docket 154]**

23 **I. MOTION PRESENTED**

24 At docket 154, plaintiffs move to quash a subpoena served on the United
25 Firefighters Association Local 493. Defendants respond at docket 306. Plaintiffs' reply
26 is at docket 330. Oral argument was requested but would not assist the court.

27 **II. DISCUSSION**

28 The parties are familiar with the background giving rise to this litigation, and the
court has described that background in previous orders. It need not be repeated here
except to say that the motion at bar relates to a subpoena served on a non-party, the
United Phoenix Fire Fighter Association Local 493, a union to which plaintiffs belong.

The Rule governing subpoenas to third parties is Rule 45 of the Federal Rules of
Civil Procedure. Rule 45 is very explicit with respect to the grounds which can support
an order quashing or modifying a subpoena. The grounds recognized in the rule are
(1) failure to allow a reasonable time to comply, (2) requiring a response beyond the

1 applicable geographical limits, (3) requiring disclosure of privileged or protected
2 information, and (4) imposing an undue burden.

3 There is no suggestion that the subpoena gave too little time for compliance, nor
4 is there any suggestion that there is a problem with geographical limits. Rather,
5 plaintiffs raise other objections. Much of plaintiffs' briefing focuses on the proposition
6 that the information requested is not relevant to the dispute between plaintiffs and
7 defendants. However, relevance is not a basis separately recognized in Rule 45.
8 Nevertheless, the court concludes that a subpoena seeking completely irrelevant
9 information might be quashed as unduly burdensome, even if the burden required fell
10 short of orthodox notions of what constitutes an undue burden. Put differently, to
11 require any significant effort in the service of a pointless request is "undue." Here,
12 however, defendants' response establishes some relevance for the information
13 requested¹ under the broad scope of discovery allowed by the Federal Rules.² The
14 court will not quash the subpoena on the basis that the information sought lacks
15 relevance.

16 Next, plaintiffs contend that the subpoena should be quashed because it
17 undermines their privilege of association as union members. This is an argument
18 falling within ambit of Rule 45's concern for safeguarding privileged or protected
19 information. The burden of proof rests on the party seeking to quash the subpoena.³
20 Plaintiffs assert that the request for documents impacts their right to privacy. They give
21 as an example the request for sign-in sheets which would show which members of the
22 union are active and which are not. Similarly, they contend that the request for meeting
23 minutes will "chill" their associational rights.⁴ Plaintiffs cite two cases to support their
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25 ¹Doc. 306 at 6-10.

26 ²Fed. R. Civ. P. 26(b).

27 ³*Wiwa v. Royal Dutch Petroleum Co.*, 392 F. 3d 812, 818 (5th Cir. 2004).

28 ⁴Doc. 154 at 4-5.

1 position, *Familias Unidas v. Briscoe*⁵ and *Int'l Union v. Garner*.⁶ Neither case is in
2 point.

3 In the *Familias Unidas* case, the court held that a state statute allowing county
4 judges to demand public disclosure of the members of organizations considered to be
5 involved in activities which would interfere with the operation of public schools was a
6 violation of the First Amendment. That statute authorized a government intrusion into
7 the First Amendment rights of the citizenry. Here, there is no government intrusion;
8 rather, a private litigant seeks information for the limited purpose of litigation.

9 In the *Garner* case, the court dealt with an employers' request for documents
10 which arose in the midst of "a highly contentious conflict over a union organizing
11 campaign."⁷ In that context, the court denied a request for authorization cards signed
12 by employees. There is no assertion here that defendants are attempting to interfere in
13 union organizational activities. Moreover it appears that there is no secret about which
14 persons are members of the union, for the testimony indicates that all Phoenix
15 firefighters are members of the union.⁸ Plaintiffs have not carried their burden to show
16 any meaningful interference with their right to freely associate.

17 The remaining argument advanced by plaintiffs relates to the burden of
18 compliance. First, they contend that the request is overly broad. To the extent that
19 might be a basis for quashing the subpoena, any concern has been satisfactorily
20 addressed by the narrowing of the requested documents set forth in defendants'
21 response.⁹ Next, they contend that production of the documents would be unduly
22 burdensome. Given the narrowed request reflected in defendants' response, plaintiffs

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24 ⁵619 F. 2d 391, 398-99 (5th Cir. 1981).

25 ⁶102 F.R.D. 108 (M.D. Tenn. 1984).

26 ⁷*Id.* at 102 F.R.D. 109.

27 ⁸Doc. 306 at 11.

28 ⁹See doc.306 at 14, n.31.

1 have not demonstrated why compliance would be unduly burdensome. As one court
2 has explained, “[w]here a movant asserting undue burden ‘seeks to prevent a
3 deposition entirely’ his burden of proof is particularly great.”¹⁰

4 In their reply, plaintiffs raise a new argument. They contend that the decision by
5 Magistrate Judge Aspey (which was not appealed to this court) establishes that the
6 “exact information sought by Defendants is not relevant to any issue in this case and is
7 therefore not discoverable.”¹¹ Arguments raised for the first time in a reply are not
8 ordinarily considered. However, because this argument is in effect an assertion that the
9 law of the case established in the order from the magistrate judge controls the result
10 with respect to the pending motion, the court will consider it.

11 The order in question¹² denied defendants’ motion to compel deposition
12 testimony concerning a “pre-litigation Phoenix firefighters union meeting conducted in
13 early 2013, on an unknown date and attended by eight of the Plaintiffs, two union
14 officials, other [firefighters] and Plaintiffs’ eventual counsel.”¹³ The order held that
15 testimony about that meeting “is not privileged, [but] it is also not relevant.”¹⁴ Because
16 that order has established the law of the case with respect to that meeting, this court
17 now holds that the subpoena in question may not require production of documents
18 which are directly related to the meeting described in Magistrate Judge Aspey’s order.
19 That order does not otherwise affect the analysis set out above.

20 In summary, the court accepts the narrowing of the scope of the subpoena as
21 set forth in footnote 31 of defendants’ response. This court will also restrict the scope
22 of the subpoena to exclude documents related to the one meeting addressed in
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24 ¹⁰*Payne v. District of Columbia*, 859 F. Supp. 2d 125, 131 (D.D.C. 2012).

25 ¹¹Doc. 330 at 1.

26 ¹²Doc. 264.

27 ¹³*Id.* at 1.

28 ¹⁴*Id.* at 10.

1 Magistrate Judge Aspey's order. As so narrowed, the subpoena stands and shall be
2 enforced.

3 **III. CONCLUSION**

4 The motion at docket 154 is **GRANTED in part and DENIED in part** as follows:

5 The subpoena is modified to excise requests for materials excluded by defendants'
6 concession in footnote 31 of docket 306, and it is further modified to exclude any
7 documents directly relating to the meeting addressed in Magistrate Judge Aspey's order
8 at docket 264, but in all other respects the subpoena shall be enforced.

9 DATED this 27th day of August 2014.

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11 /s/ JOHN W. SEDWICK
12 SENIOR UNITED STATES DISTRICT JUDGE
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